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5 Attorney for Plaintiffs,  
RICHARD REES, ROBERT WINTERS,  
6 individually and on behalf of  
all others similarly-situated  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10 (Fresno Division)  
11

12 RICHARD REES, ROBERT WINTERS, ) CASE NO. 1:05-cv-00297 LJO-SMS  
individually and on behalf of )  
13 all other similarly-situated, )  
Plaintiffs, ) STIPULATION TO FILE  
14 ) FIRST AMENDED COMPLAINT; EXHIBIT  
vs. ) A; **ORDER**  
15 )  
16 SOUZA'S MILK TRANSPORTATION, )  
CO., and DOES 1 through 100, )  
17 Defendants. )  
18 )  
19 \_\_\_\_\_ )

20 IT IS HEREBY STIPULATED by and between the parties, through  
21 their respective counsel, that the Court should enter an Order  
22 allowing plaintiffs to file a First Amended Complaint in the form  
23 of Exhibit A attached hereto.

24 IT IS FURTHER STIPULATED that service of the First Amended  
25 Complaint on defendants will be deemed effective as of the date

26 ///

27 ///

1 defense counsel is served, electronically or otherwise, with a copy  
2 of the Court's Order.

3 DATE: May 28, 2007

LAW OFFICE OF JERRY BUDIN

4 /s/ Jerry Budin

5  
6 JERRY BUDIN  
7 Attorney for Plaintiffs,  
8 RICHARD REES, ROBERT WINTERS,  
individually and on behalf of  
all others similarly-situated

9 DATE: May 28, 2007

HOGAN & KLINGENBERGER

10 /s/ Daniel K. Klingenger

11  
12 DANIEL KLINGENBERGER  
13 Attorney for Defendant,  
14 SOUZA'S MILK TRANSPORTATION CO.

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EXHIBIT A

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3 RICHARD REES, ROBERT WINTERS,  
4 individually and on behalf of  
5 all others similarly-situated  
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8 UNITED STATES DISTRICT COURT

9  
10 EASTERN DISTRICT OF CALIFORNIA  
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13

14 RICHARD REES, ROBERT WINTERS, ) CASE NO. CV-F-05-00297 LJO SMS  
15 individually and on behalf of )  
16 all other similarly-situated, )

17 )  
18 Plaintiffs, ) FIRST AMENDED COMPLAINT  
19 ) FOR (1) UNPAID OVERTIME  
20 vs. ) COMPENSATION [29 U.S.C.  
21 ) §201 et seq.] AND  
22 SOUZA'S MILK TRANSPORTATION, ) (2) VIOLATIONS OF  
23 CO., and DOES 1 through 100, ) UNFAIR COMPETITION ACT  
24 ) [California B&P §17200 et  
25 Defendants. ) seq.]  
26 )  
27 )

28 ) **DEMAND FOR JURY TRIAL**

1 Plaintiffs, RICHARD REES and ROBERT WINTERS, individually and  
2 on behalf of all others similarly-situated, complain and allege as  
3 follows:

4 **INTRODUCTION**

5 1. This is an "opt-in" collective action pursuant to 29  
6 U.S.C. §216(b) and an "opt-out" class action pursuant to F.R.C.P.  
7 23 seeking unpaid overtime compensation and interest thereon,  
8 penalties, injunctive and other equitable relief, and reasonable  
9 attorney's fees and costs brought by plaintiffs, RICHARD REES and  
10 ROBERT WINTERS, individually and on behalf of all other truck  
11  
12 drivers employed by, or formerly employed by, SOUZA'S MILK  
13 TRANSPORTATION, CO., MANUEL B. SOUZA, JR. and its subsidiaries,  
14 owners and affiliated companies (hereinafter collectively referred  
15 to as "defendants"), within the State of California. For at least  
16 four years prior to the filing of this complaint and continuing to  
17 the present, defendants have had a consistent policy of requiring  
18 their truck drivers, including plaintiffs, to work in excess of  
19 forty (40) hours per week without paying them overtime compensation  
20 as required by Federal and State laws.

21 2. This complaint contains four causes of action. In the  
22 First and Third Causes of Action, the named plaintiffs,  
23 individually and in an "opt-in" collective action on behalf of all  
24 similarly-situated current and former truck drivers employed by  
25 defendants in the State of California (Class 1), seek to recover  
26 unpaid overtime compensation, including the interest thereon,  
27 statutory penalties and reasonable attorney's fees and litigation  
28 costs pursuant to 29 U.S.C. §201 et seq. Jurisdiction of this

1 cause of action is conferred upon this Court by 29 U.S.C. §201 et  
2 seq. and 28 U.S.C. §1331.

3 3. In the Second and Fourth Cause of Action, the plaintiffs,  
4 individually and in an "opt-out" class action on behalf of all  
5 similarly-situated current and former truck drivers employed by  
6 defendants in the State of California, seek injunctive relief and  
7 restitution from defendants of all wrongfully withheld overtime  
8 compensation pursuant to California Business and Professions Code  
9 §§17200-17208. Jurisdiction of this state law cause of action is  
10 conferred upon this court by 28 U.S.C. §1367.

11 ///

12 **GENERAL ALLEGATIONS**

13 4. Defendant SOUZA'S MILK TRANSPORTATION CO. is, and at all  
14 times relevant herein was, a business entity engaged in the  
15 intrastate transportation industry in the State of California, with  
16 business operations in Gustine, California in the Eastern District  
17 of California for the United States District Court. At all times  
18 relevant herein, the principal business of said defendant consisted  
19 of the intrastate transportation, wholly within the State of  
20 California, of milk products from milk plants to stores and  
21 warehouses, which business activities involved the production of  
22 goods for interstate commerce and/or affected interstate commerce.

23 5. Defendant Manuel B. Souza, Jr., is and all times relevant  
24 herein was an owner, President, and on the Board of Directors of  
25 defendant Souza's Milk Transportation Co., Inc. Defendant Manuel  
26 B. Souza, Jr., was personally responsible for the overall  
27 operational control of and personally made all of the significant  
28 business decision for defendant Souza's Milk Transportation Co.,

1 Inc. Furthermore, with respect to all of the allegations in this  
2 First Amended Complaint, defendant Manuel B. Souza, Jr., acted  
3 directly and/or indirectly in the interest of defendant Souza's  
4 Milk Transportation Co., Inc., so as to satisfy the definition of  
5 an employer under the Fair Labor Standards Act, 29 U.S.C. § 203(b).

6 6. The true names and capacities, whether individual,  
7 corporate, associate or otherwise, of defendants DOES 1 to 100,  
8 inclusive, are unknown to plaintiffs, who therefore sue said  
9 defendants by such fictitious names, and plaintiffs will seek leave  
10 of Court to amend this Complaint when the true names and capacities  
11 of said defendants are ascertained. Plaintiffs are informed and  
12 believe, and thereon allege, that each of the defendants designated  
13 herein as a DOE is responsible in some manner and liable to  
14 plaintiffs and the proposed classes upon the events forming the  
15 grounds for this suit.

16 7. Plaintiffs are informed and believe, and thereon allege,  
17 that at all times relevant hereto, each of the defendants, whether  
18 specifically named or designated as a DOE, was the agent, servant  
19 and employee of the remaining co-defendants and, in doing the  
20 things herein alleged, was acting within the course and scope of  
21 said agency, employment and service with the advance knowledge,  
22 consent and ratification of each of the remaining defendants.

23 8. All of the acts and conduct committed by each and every  
24 corporate defendant and described in this Complaint were duly  
25 authorized, ordered and directed by that corporate defendant's  
26 managing agents, employees and officers. In addition, these  
27 managing agents, corporate officers and employees participated in  
28 the aforesaid acts and conduct and ratified, accepted the benefits

1 of, condoned and approved each and all of the aforesaid acts and  
2 conduct of that defendant corporation.

3 9. The acts, conduct and events alleged herein occurred  
4 within the territory covered by the Eastern District of California  
5 for the United States District Court and, more specifically, in  
6 Merced and Tulare Counties.

7 10. Plaintiff ROBERT WINTERS and numerous members of the  
8 proposed classes reside in the Eastern District of California for  
9 the United States District Court.

10 11. Defendants' failure to pay overtime compensation  
11 is continuing and ongoing.

12 **COLLECTIVE, CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

13 12. The named plaintiffs bring this action, individually and  
14 on behalf of all current and former truck drivers employed by  
15 defendants, as an "opt-in" collective action pursuant to 29 U.S.C.  
16 §216(b) and as an "opt-out" class action pursuant to F.R.C.P. 23  
17 (or, in the alternative, as a representative action pursuant to  
18 Business and Professions Code §17204).

19 13. The "opt-in" class (hereinafter Class 1) that the  
20 plaintiffs seek to form and represent in the First and Third Causes  
21 of Action is composed of and defined as follows:

22 Class 1

23 All persons who are employed or have been  
24 employed by defendants in the State of  
25 California who, within three (3) years of  
26 the filing of this complaint and to the date  
27 of trial (liability period 1), have worked  
28 as a truck driver hauling milk products from



1 milk plants to stores and/or warehouses  
2 solely within the State of California and  
3 have worked in excess of forty (40) hours  
4 per week without being paid overtime  
5 compensation by defendants for those excess  
6 hours.

7 14. The plaintiffs are similarly-situated to the members of  
8 Class 1 in that plaintiffs (a) were employed by defendants during  
9 liability period 1 as truck drivers; (b) regularly worked in excess  
10 of forty (40) hours per week but were not paid overtime therefor  
11 and (c) drove in intrastate transportation.

12 15. The "opt-out" class (hereinafter Class 2) that the  
13 plaintiffs seek to certify and represent in the Second and Fourth  
14 Causes of Action is composed of and defined as follows:

15 Class 2

16 All persons who are employed or have been  
17 employed by defendants in the State of  
18 California who, within four (4) years of the  
19 filing of this complaint and to the date of  
20 trial (liability period 2), have worked as  
21 a truck driver hauling milk products  
22 from milk plants to stores and/or warehouses  
23 solely within the State of California and  
24 have worked in excess of forty (40) hours  
25 per week without being paid overtime  
26 compensation by defendants for those excess  
27 hours.

28 16. As to Class 2, the requirements of F.R.C.P. 23 are

1 satisfied in that there is a well-defined community of interest in  
2 the litigation and the proposed class is easily ascertainable. In  
3 addition, the following requirements are satisfied:

4 a. Numerosity. The potential members of Class 2 as  
5 defined are so numerous that joinder of all the  
6 members of the class is impracticable. While  
7 the precise number of class members has not been  
8 determined at this time, plaintiffs are informed  
9 and believe that defendants have employed more  
10 than fifty (50) persons as truck drivers in  
11 California during liability period 2, who are or  
12 have been affected by defendants' policy of  
13 requiring such truck drivers to work in excess  
14 of forty (40) hours per week without paying  
15 overtime compensation.

16 b. Commonality. There are questions of law and  
17 fact common to Class 2 that predominate over any  
18 questions affecting only individual members of  
19 Class 2. These common questions of law and fact  
20 include without limitation:

21 i. Whether defendants violated Sections 17200  
22 et seq. of the California Business and  
23 Professions Code by failing to pay  
24 overtime compensation to truck drivers  
25 who drove in intrastate transportation in  
26 excess of forty (40) hours per week.

27 c. Typicality. The claims of the plaintiffs are  
28 typical of the claims of Class 2. Plaintiffs

1 and all members of Class 2 sustained economic  
2 damages arising out of and caused by defendants'  
3 common course of conduct in violation of law as  
4 alleged herein.

5 d. Adequacy of Representation. Plaintiffs are  
6 members of Class 2 and will fairly and  
7 adequately represent and protect the interests  
8 of the members of Class 2. Counsel who  
9 represent the plaintiff is competent and  
10 experienced in litigating employment-related  
11 cases, including wage and hour class actions.

12 e. Superiority of Class Action. A class action is  
13 superior to other available means for the fair  
14 and efficient adjudication of this controversy.  
15 Individual joinder of all Class 2 members is not  
16 practicable, and questions of law and fact  
17 common to Class 2 predominate over any questions  
18 affecting only individual members of Class 2.  
19 Each member of Class 2 has been economically  
20 damaged and is entitled to recovery by reason of  
21 defendants' illegal policy and/or practice of  
22 requiring truck drivers who drove in intrastate  
23 transportation to work in excess of forty (40)  
24 hours per week without paying overtime  
25 compensation. Class action treatment will allow  
26 those similarly-situated persons to litigate  
27 their claims in the manner that is most  
28 efficient and economical for the parties and the

1                   judicial system.

2  
3                   **FIRST CAUSE OF ACTION**

4                   **(29 U.S.C. Section 201 et seq.)**

5           17. The allegations of paragraphs 1-14 above are realleged and  
6 incorporated herein by reference.

7           18. Plaintiff, RICHARD REES, was employed by defendants  
8 during liability period 1 as a truck driver. He regularly worked  
9 in excess of forty (40) hours per week. His principal duties  
10 consisted of the intrastate transportation, wholly within the State  
11 of California, of milk products from milk plants to stores and/or  
12 warehouses, which duties involved the production of goods for  
13 interstate commerce and/or which affected interstate commerce.

14           19. During liability period 1, pursuant to the provisions of  
15 the Fair Labor Standards Act (29 U.S.C. Sections 206 and 207) and  
16 regulations thereunder, plaintiffs and Class 1 were entitled to  
17 overtime compensation for hours worked in excess of forty (40) per  
18 week but defendants failed to pay plaintiff and Class 1 overtime  
19 compensation.

20           20. Such failure was willful within the meaning of 29 U.S.C.  
21 Section 255(a).

22           WHEREFORE, plaintiff and Class 1 request relief as  
23 hereinafter set forth.

24                   **SECOND CAUSE OF ACTION**

25                   **(Calif. B&P Code Section 17200 et seq.)**

26           21. The allegations of paragraphs 1-12 and 15-16 above are  
27 realleged and incorporated herein by reference.

28           22. Plaintiff, RICHARD REES, was employed by defendants

1 during liability period 2 as a truck driver. He regularly worked  
2 in excess of forty (40) hours per week. His principal duties  
3 consisted of the intrastate transportation, wholly within the State  
4 of California, of milk products from milk plants to stores and/or  
5 warehouses, which duties involved the production of goods for  
6 interstate commerce and/or which affected interstate commerce.

7 23. During liability period 2, plaintiffs and Class 2 were  
8 entitled to overtime compensation pursuant to 29 U.S.C. §201 et  
9 seq. for hours worked in excess of forty (40) per week but  
10 defendants failed to pay overtime compensation. Said failure  
11 constitutes an unfair and unlawful business practice under  
12 California Business and Profession Code Sections 17200 et seq.

13 24. As a result of said unfair and unlawful business practice,  
14 defendants have reaped and continue to reap unfair benefits and  
15 illegal profits at the expense of plaintiff and Class 2.  
16 Defendants should be enjoined from continuing these unfair business  
17 practices and made to disgorge their ill-gotten gains and return to  
18 plaintiff and Class 2 the wrongfully withheld overtime  
19 compensation.

20 WHEREFORE, plaintiff and Class 2 request relief as hereinafter  
21 set forth.

22 **THIRD CAUSE OF ACTION**  
23 **(29 U.S.C. Section 201 et seq.)**

24 25. The allegations of paragraphs 1-14 above are realleged and  
25 incorporated herein by reference.

26 26. Plaintiff, ROBERT WINTERS, was employed by defendants  
27 during liability period 1 as a truck driver. He regularly worked  
28 in excess of forty (40) hours per week. His principal duties

1 consisted of the intrastate transportation, wholly within the State  
2 of California, of milk products from milk plants to stores and/or  
3 warehouses, which duties involved the production of goods for  
4 interstate commerce and/or which affected interstate commerce.

5 27. During liability period 1, pursuant to the provisions of  
6 the Fair Labor Standards Act (29 U.S.C. Sections 206 and 207) and  
7 regulations thereunder, plaintiff and Class 1 were entitled to  
8 overtime compensation for hours worked in excess of forty (40) per  
9 week but defendants failed to pay plaintiff and Class 1 overtime  
10 compensation.

11 28. Such failure was willful within the meaning of 29 U.S.C.  
12 Section 255(a).

13 WHEREFORE, plaintiff and Class 1 request relief as  
14 hereinafter set forth.

15  
16 **FOURTH CAUSE OF ACTION**  
**(Calif. B&P Code Section 17200 et seq.)**

17 29. The allegations of paragraphs 1-12 and 15-16 above are  
18 realleged and incorporated herein by reference.

19 30. Plaintiff, ROBERT WINTERS, was employed by defendants  
20 during liability period 2 as a truck driver. He regularly worked  
21 in excess of forty (40) hours per week. His principal  
22 duties consisted of the intrastate transportation, wholly within the  
23 State of California, of milk products from milk plants to stores  
24 and/or warehouses, which duties involved the production of goods  
25 for interstate commerce and/or which affected interstate commerce.

26 31. During liability period 2, plaintiffs and Class 2 were  
27 entitled to overtime compensation pursuant to 29 U.S.C. §201 et  
28 seq. for hours worked in excess of forty (40) per week but

1 defendants failed to pay overtime compensation. Said failure  
2 constitutes an unfair and unlawful business practice under  
3 California Business and Profession Code Sections 17200 et seq.

4 32. As a result of said unfair and unlawful business practice,  
5 defendants have reaped and continue to reap unfair benefits and  
6 illegal profits at the expense of plaintiff and Class 2.  
7 Defendants should be enjoined from continuing these unfair business  
8 practices and made to disgorge their ill-gotten gains and return to  
9 plaintiff and Class 2 the wrongfully withheld overtime  
10 compensation.

11 WHEREFORE, plaintiff and Class 2 request relief as hereinafter  
12 set forth.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiffs and the Classes request relief as  
15 follows:

16 **AS TO THE FIRST AND THIRD CAUSES OF ACTION UNDER 29 U.S.C. §201 et**  
17 **seq.**

18 1. For a determination that the First and Third Causes of  
19 Action under 29 U.S.C. §201 et seq. may be maintained as an "opt-  
20 in" collective action under 29 U.S.C. §216(b) as to the unnamed,  
21 but similarly-situated truck drivers comprising Class 1;

22 2. For unpaid overtime compensation to plaintiffs and Class  
23 1 during liability period 1 according to proof;

24 3. For additional liquidated damages;

25 4. For reasonable attorney fees and costs;

26 5. For prejudgment interest at the prevailing legal rate;

27 and

28 6. For such other and further relief as the Court may deem

proper.

**AS TO THE SECOND AND FOURTH CAUSES OF ACTION UNDER B&P §17200 et seq.**

7. For a determination that the Second and Fourth Causes of Action under California B&P Code §17200 may be maintained as an "opt-out" class action under F.R.C.P. 23 as to the unnamed truck drivers comprising Class 2;

8. For restitution and disgorgement of all ill-gotten gains and benefits, including restitution of unpaid overtime compensation to plaintiffs and Class 2 during liability period 2 according to proof;

9. For injunctive relief that defendants be ordered to cease and desist from unfair business practices in violation of Business and Professions Code Section 17200 et seq.;

10. For prejudgment interest at the prevailing legal rate; and

11. For such other and further relief as the court may deem proper.

**PLAINTIFFS AND THE CLASSES DEMAND TRIAL BY JURY**

DATE: May 17, 2007

LAW OFFICE OF JERRY BUDIN

/s/ Jerry Budin

JERRY BUDIN  
Attorney for Plaintiffs,  
RICHARD REES, ROBERT WINTERS,  
individually and on behalf of  
all others similarly-situated



**ORDER**

Based upon the above Stipulation, and good cause appearing therefrom,

The above stipulation is approved by the court and IT IS HEREBY ORDERED that plaintiffs shall be allowed to file a First Amended Complaint in the form of Exhibit A attached hereto. **Plaintiff is hereby Ordered to file the First Amended Complaint within five (5) days from service of this Order.**

IT IS SO ORDERED.

**Dated: June 1, 2007**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE